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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

9/26/00

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Temps & Co., Inc.

Serial No. 75/321,951

Adam D. Resnick and Nora E. Garrote of Piper Marbury Rudnick & Wolfe LLP for Temps & Co., Inc.

Matthew J. Pappas, Trademark Examining Attorney, Law Office
104 (Sidney I. Moskowitz, Managing Attorney).

Before Seeherman, Hohein and Hairston, Administrative
Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Temps & Co., Inc. has filed an application to
register the mark "THE CAREER SHOP" for "personnel placement"
services.¹

¹ Ser. No. 75/321,951, filed on July 10, 1997, which alleges a bona fide intention to use the mark in commerce. The word "CAREER" is disclaimed.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its services, so resembles the mark "CAREER SHOP," which is registered, in the stylized form reproduced below,

for "providing placement and recruitment information via a computer database, and consulting services therewith,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

Turning first to consideration of the respective marks, applicant asserts that its "THE CAREER SHOP" mark, when viewed "as a whole", projects a substantially different commercial impression as applied to Applicant's personnel services" (underlining in original) from that engendered by registrant's "CAREER SHOP" mark for its personnel services. We agree with the Examining Attorney, however, that when considered in their entirety, the marks at issue are "virtually identical in appearance, sound, connotation and

² Reg. No. 1,944,252, issued on December 26, 1995, which sets forth dates of first use of December 1, 1994. The word "CAREER" is disclaimed.

commercial impression," with the presence of the article "THE" in applicant's mark adding nothing of significance to distinguish it from registrant's mark.

Turning, therefore, to consideration of the respective services, it is well settled that services need not be identical or even competitive in nature in order to support a finding of likelihood of confusion. Instead, it is sufficient that the services are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same entity or provider. See, e.g., Monsanto Co. v. Enviro-Chem Corp., 199 USPQ 590, 595-96 (TTAB 1978) and In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

Although acknowledging in its brief that the above legal principle "is correct," applicant maintains that there is no likelihood of confusion in this case because "the respective services, while arguably somewhat similar, do not overlap." Specifically, applicant contends that (underlining in original):

Registrant's services focus on electronic
career-related and consulting services,

[while] Applicant's services are of a different nature. Applicant's services focus on regular employment placement services--resume writing assistance, and sending applicants to interviews with prospective employers, particularly as these services apply to the temporary employment market, [the] so-called "temp jobs."

Meanwhile, Registrant's services appear to be focused on the "shopping around" for jobs online with the assistance of a Personal Job Shopper and licensed career counselors. Potential employers are "shopped around" on an online computer database, while potential employees are assisted in their employment search by licensed career counselors who will respond to questions from potential employers. Applicant's services, on the other hand, revolve around the more traditional placement of employees whereby an applicant can come in and "browse" or "shop" for a career, like one would pick up something at any shop.

In other words, Applicant's services relate to a "physical" shop where consumers "browse" or "shop" for a temporary job. Meanwhile, Registrant's services focus on a "virtual shop or database of job information where employers are "shopped" around to potential employees by licensed career counselors of Registrant.

We concur with the Examining Attorney, however, that applicant's "personnel placement" services and registrant's "providing placement and recruitment information via a computer database, and consulting services therewith," are so closely related in a commercial business sense that, when rendered under the virtually identical marks "THE CAREER SHOP"

and "CAREER SHOP," confusion as to their origin or affiliation would be likely. Both applicant and registrant provide personnel placement and job recruitment information, along with associated career consulting services, with the only difference being that applicant offers its services from a physical location while registrant's services are available online. This distinction, however, is without any meaningful significance since a job applicant in search of career choices may obtain essentially the same assistance through either applicant's services or those of registrant. Thus, as the Examining Attorney points out as an example in his brief, a consumer may not only utilize the applicant's personnel placement services, but "[t]hat same consumer, when selecting a company to provide additional employment assistance, may be more likely to choose the registrant's personnel placement services under the mistaken belief that it is the same company which provided his/her initial personnel placement services."

Nevertheless, applicant insists that, in light of the evidence of record of "the relative dilution of the term CAREER SHOP for use in connection with employment-related services," "consumers are accustomed to distinguishing among such marks" and thus, given the difference in manner in which applicant and registrant provide their respective services, confusion as to source or sponsorship thereof is not likely.

In this regard, applicant submitted with its request for reconsideration of the final refusal excerpts from six third-party Internet websites which utilize the term "CAREER SHOP" in connection with what applicant characterizes as "job-related services." The excerpts, in particular, show use of the following designations:

(a) "CareerShop.com," which among other things lists such topics as "Resumes," "Jobs," "Personal Job Shopper," "Virtual Job Fairs," "Training" and "Recruiting Services";

(b) "The Writer's Nook Business and Career Shop," which advertises a link to "Usjob.network Find The Perfect Job. Find The Ideal Employee" at "JobWorld" and sets forth a link to "JobHorizon - where careers begin";

(c) "DMD Enterprises Career Shop," which touts "a great line of products and services to assist you in your personal and career development efforts," including a "Resume Writing Service" and a "Career Development Partnership Service";

(d) "NC-SIM Career Shop," which, while "UNDER..CONSTRUCTION," indicates that it will post employment opportunities under the heading of "Job Bulletins";

(e) "DURHAM COLLEGE The Career Shop," which offers "all the support, resources and educational options [required] to help you meet your individual career needs," including a "Resume Service" with an option providing for a "[o]ne-hour appointment with a counselor to write a resume designed to stand out from the crowd," "One Hour Clinics" featuring "a personalized one-to-one session with a Career Counsellor [sic]" and a "Resource Centre [sic]" setting

forth, inter alia, "occupational and career information" and "job search resources"; and

(f) "Welcome to our Career Shop," which "offers advice and guidance on careers and training to both employed and unemployed people."

The Examining Attorney curtly dismisses the above evidence, asserting in his brief that the fact that "other entities use a given term with related services is completely unfounded for purposes of determining whether a likelihood of confusion exists when said term is not protected under federal trademark/service mark laws." While we disagree with the Examining Attorney that the evidence of third-party use of designations containing the term "CAREER SHOP" is irrelevant in the absence of federal registrations therefor, we find the evidence is not persuasive of a different result with respect to the question of likelihood of confusion.

Specifically, while the evidence furnished by applicant demonstrates that the term "CAREER SHOP" is at least highly suggestive, and therefore is entitled only to a relatively narrow scope of protection, when used in connection with services involving personnel placement, job recruitment and associated career counseling, it still is the case that even a weak mark, such as registrant's "CAREER SHOP" mark, merits protection against a mark which is likely to cause confusion. See, e.g., *In re Clorox Co.*, 578 F.2d 305, 198

USPQ 337, 341 (CCPA 1978). Thus, while applicant's "THE CAREER SHOP" mark and registrant's "CAREER SHOP" mark are both weak in the sense that they share the highly suggestive terminology "CAREER SHOP," the fact remains, as discussed earlier herein, that such marks are virtually identical when considered in their entirety and in relation to the respective services. Both marks are essentially identical, not only in sound and appearance, but they also possess the same highly suggestive connotation and project the same commercial impression.

Moreover, and of even greater significance, the evidence made of record by applicant serves to confirm the closely related and overlapping nature of applicant's and registrant's services. Such evidence reveals that personnel placement services of the type applicant intends to offer, including resume writing assistance and arranging interviews with prospective employers, are readily available online to customers seeking assistance with career opportunities and employment opportunities, just as are registrant's services of providing personnel placement, recruitment information and associated counseling. Clearly, when rendered under the virtually identical marks "THE CAREER SHOP" and "CAREER SHOP," consumers would regard registrant's services as a web-based version of applicant's services and vice versa.

Accordingly, we conclude that consumers and prospective customers, familiar with registrant's mark "CAREER SHOP" for "providing placement and recruitment information via a computer database, and consulting services therewith," would be likely to believe, upon encountering applicant's virtually identical mark "THE CAREER SHOP" for "personnel placement" services, that such closely related and overlapping services emanate from, or are otherwise sponsored by or affiliated with, the same source.

Decision: The refusal under Section 2(d) is affirmed.

E. J. Seeherman

G. D. Hohein

Judges,
Board
P. T. Hairston
Administrative Trademark
Trademark Trial and Appeal